

A  
A



000  
6334  
925  
2



Digitized by the Internet Archive  
in 2008 with funding from  
Microsoft Corporation



HELPS FOR STUDENTS OF HISTORY, No. 18

EDITED BY C. JOHNSON, M.A., H. W. V. TEMPERLEY, M.A.,  
AND J. P. WHITNEY, D.D., D.C.L.

ECCLESIASTICAL  
RECORDS

THREE LECTURES

BY

CLAUDE JENKINS

LIBRARIAN AND CHAPLAIN TO THE ARCHBISHOP OF CANTERBURY  
PROFESSOR OF ECCLESIASTICAL HISTORY KING'S COLLEGE, LONDON

LONDON

SOCIETY FOR PROMOTING  
CHRISTIAN KNOWLEDGE  
NEW YORK: THE MACMILLAN COMPANY

1920



Z  
u308  
H5  
H4  
u2. 18

TO THE MEMORY OF  
JOHN HUNTER SMITH  
A GREAT SCHOOLMASTER  
AND  
A TRUE LOVER OF HISTORY



# ECCLESIASTICAL RECORDS

## THE ECCLESIASTICAL SCRIBE

AN ecclesiastical scribe may be either an ecclesiastic who is a scribe or a scribe who writes documents of ecclesiastical concern or for ecclesiastical purposes; he may be either an original author or one who ministers to the originality of others; and even this does not exhaust the possible permutations and combinations. In every age, again, he will have his conventions and his idiosyncrasies; the materials with which he works may be found to shew a certain amount of variation; more important still, his writing itself will tend to reproduce certain general features of the school to which he belongs and the training that he has received, so that, arguing from MSS. of known *provenance* and date the palæographer, like the art critic, will often tell you with some confidence, if with less complete assurance of infallibility, not only when, but where, a particular work was produced, whether at Canterbury, shall we say, or at St. Albans or some other great centre. And the range of the subject, as will be seen, is vast, covering many lands and many centuries, each more than sufficient for a single lecture.

A Keeper of MSS. may be allowed to try to picture to himself some of these men and the tools and materials they used, and a Librarian to be not altogether unmindful of the circumstances in which their work was done. It would be tempting to depict that scene in the Far East where a man clothed in white linen, with a writer's inkhorn by his side, is marking the people, as the prophet saw him by the river Chebar. It is still more tempting to skip eight centuries and look inside a student's room which will be famous while scholarship endures. Seated there is a man with a history. Years ago, when his father died for the Faith he believed, he had been left, a lad of seventeen, the eldest of seven children, to support himself and his family. For a time a rich woman, a widow, helped the poor student, and then he parted with his only wealth, a few fine copies of ancient authors—we can judge what it must have meant—to a purchaser who allowed him 6d. a day for several years, sufficient for his personal needs. He teaches, and his fame as a teacher grows year by year, though not without doubts and jealousies. And now in the prime of life he sits here, still rigorously austere to himself, but wonderfully attractive to others, and at last with everything at hand that a scholar could desire. It is a pleasant room, looking out upon an inner courtyard, where a fountain, no doubt, and perhaps even trees, afford a refreshing contrast to the fierce glare of an Eastern sun. The scene is a busier one than the quiet peace of Dürer's imaginative picture

of St. Jerome in his study, with the Cardinal's hat hanging on a peg and the lion in the foreground which seems to be saying: "Deus, Deus, nobis haec otia fecit." For as the scholar takes from the stone ledge by his side one or other of those rolls of the New Testament scriptures which Sir Frederic Kenyon has so vividly described,<sup>1</sup> he begins to read, and as he reads to dictate a commentary on the sacred text. Hour after hour he goes on and one *notarius* or shorthand-writer succeeds another without a break, for there are seven or eight, at least, at hand to take their turn; and as many *antiquarii* or transcribers, probably in another room, relieve each other in writing out the notes in longhand as each *notarius* gives up his place. And not only these but girls also who have been trained in elegant calligraphy. Maecenas, we are sometimes told, invented shorthand; it is a Christian Maecenas who has made all this possible at his own charges, and who is here following his master's progress with untiring devotion and admiration all day long. "He left *no* leisure for meals or rest," says a fragment in Suidas. "Of the space from dawn to the ninth or tenth hour I say nothing. All students give *that* time to the investigation of the Divine oracles, and to reading."<sup>2</sup> And assuredly wherever the name of Origen of Alexandria and Caesarea is

<sup>1</sup> *Textual Criticism of the New Testament*, 2nd edit. (Macmillan, 1912).

<sup>2</sup> Suidas, ed. Bernhardy (1853), II. 1280 (of Ambrosius); Hier., *Ep.* xlivi. (of Origen).

known that of Ambrosius the rich deacon should not be forgotten.

Let us turn our thoughts Westward and put the clock three or four hundred years on. By the Seventh century the fame of the skill of the monks of Ireland in writing and illumination had spread far beyond their own land as their restless activities led them to travel: witness the library of Bobbio (now mostly in the Ambrosiana at Milan), or of St. Gall, both founded by Irish monks *c.* 613. If the ascription of 3,000 students to a single monastery be too great a tax on our credulity, it must still be remembered that, at any rate, there is ample evidence for the existence of a sufficient number of Irish scribes to account for the production of an enormous number of manuscripts; evidence, too, of a knowledge of Greek far exceeding that of most of the mediaeval bishops, who traced on the floor of churches a St. Andrew's cross composed of the Latin and what they supposed to be the Greek alphabet, as part of the ritual of consecration. And a search for traces of acquaintance with at least some Hebrew words will not be found unfruitful. But our immediate purpose is a quest for details of a more technical kind. Let us take three or four incidents connected with Adamnan or with St. Columba. The first shall be a scene in which Adamnan represents himself as acting as amanuensis; he is taking down the words that fell from Areulf's lips, and he is doing so with a stylus upon tablets covered with

wax, just as he might have done in Rome in pre-Christian days; and we recall that upon just the same *tabulae ceratae* the mediaeval preeentor or succeentor was wont to write the list of lections and other details for the services of the church, the wax being provided by the sacrist—probably a useful way of disposing of candle-ends and other waste. This method of writing furnished the Latin language with the inelegant transformation of the Greek  $\chi\alpha\rho\sigma\sigma\epsilon\nu$ , “to scratch,” into “caraxare,” of course emended by critics into the more Ciceronian “exarare,” which has the same meaning. There are some critics whose appropriate occupation in purgatory would be an attempt to edit the *Hisperica Famina*. Let us remind ourselves then, in passing, that the primary duty of a student of a manuscript is not to determine what the scribe might have written or ought to have written, but what he wrote and what he meant to write; and if the student would see how valuable such painful work may be let him turn for encouragement to Dr. C. H. Turner’s magnificent edition of the Latin versions of the Canons or the edition of the Vulgate by Bishop John Wordsworth and Dr. H. J. White, which is one of the glories of English scholarship. The notes which Adamnan made were then transcribed, he tells us, *in membranis*, on skins. In many parts of the ancient world papyrus was never used because it was unobtainable; by the Fourth century A.D. it had been almost entirely supplanted for valuable MSS. by vellum. We shall have to wait nearly

1,000 years before "paper" in the modern sense acquired the vogue in England which it had possessed in China before the Christian era.

Our second illustration shall be the quaint traditional story of the *Cathach* of St. Columba, now in the Royal Irish Academy, and recently edited by Dr. Lawlor. St. Finnian of Moville had a MS. brought from Rome which Columba saw. To see was to covet, to covet was to copy, and alas ! he did it by stealth, regardless of copyright. But he could not keep the knowledge of his treasure to himself; and Finnian, claiming the copy, appealed to the King. Diarmait, in strict accordance with the principles of the Berne Convention, decided that "to every book belongs its son-book, as to every cow her calf." The result was a battle in which Columba's supporters were worsted, and the saint himself soon retired to Iona. The book, so the story runs, a Latin Psalter enshrined in a silver case, became the battle trophy, the mascot, of the O'Donnells. True or false, its history may remind us of that Fulda codex deeply marked with swordcuts with which the founder, the Blessed Boniface, is said to have defended himself in the Eighth century against his murderers,<sup>1</sup> or of the *Scholastic History* of Peter Comestor captured with its owner, King John of France, by the Black Prince in the Battle of Poitiers, and now to be seen among the Royal MSS. in the British Museum.<sup>2</sup>

<sup>1</sup> *Vita auctore Othlono, Lib. II.* in Mabillon's *Acta SS. Benedicti.* III. ii., p. 85.

<sup>2</sup> Royal MSS. 19 D II.

The third incident shews us the work of the copyist being “gone over” in order to ensure accuracy, as you may see it done to-day in any Search Room or lawyer’s office. A certain disciple has copied a Psalter and comes to Columba to ask for one of the brethren to run over and correct (*ut percurrens emendet*) what he has written. Columba says: “Why do you bother us? You will find that there is not a single letter too much or too little except a vowel ‘i’ which is left out.” This function of the corrector was of great importance, and one can only regret that as his modern successor, the Press Reader, is often the best educated man in a printing office, so he is usually one of the worst paid. But there is another kind of corrector also with whom every student of ancient MSS. is familiar: the reviser whose aim is to ensure not that what lies before him, and will be copied again, is merely a faithful transcript, but that it is a correct text or an improved one. The form in which his activities will display themselves will vary from emendations in the text of Origen or Eusebius in the supposed interests of orthodoxy to that of Archbishop Lanfranc, whose corrections of the corruptions introduced into the biblical text by scribes are regarded by the mediaeval chronicler as reflecting lustre upon the Churches both of England and of France,<sup>1</sup> or that of Archbishop Secker altering “the gracious assistance of God’s infinite goodness,” in one of the prayers in the Coronation Service to

<sup>1</sup> Rob. de Monte in Matthew Paris, *Chronica Majora* (Rolls Series), ii. 29.

"the merciful superintendency of the Divine Providence," in the supposed interests of elegance of diction, or to that of Matthew Paris on a larger scale proposing to excise a whole passage in an historical narrative with the marginal note or direction: "Vaeat, quia amicorum offendieulum est," or, in another case, "Utile sed impertinens."<sup>1</sup> A student knows little of the ways of textual eritics who cannot picture to himself the convincing arguments by which it would be shewn that of two MSS., of which one contained a passage of that sort, and the other did not, the one which omitted it was to be preferred since the passage was an obvious interpolation. And it is not often that we can see so clearly what really happened, as we can owing to the happy chance which has preserved a MS. corrected by Matthew Paris in the Parker Collection<sup>2</sup> at Corpus Christi College, Cambridge.

Our last extract from Adamnan<sup>3</sup> may serve as a prelude for a discussion of a somewhat different kind. Columba is in Iona sitting working in his cell. A voice is heard of someone calling across the sound and the saint remarks: "That man who keeps on shouting from over there is not a person of delicate perception (*subtilis sensus*), for to-day he will bend over and upset my inkhorn (*corniculum atramenti*)."<sup>4</sup> And so assuredly he did, for on arriving he bent across to kiss Columba, and, of course,

<sup>1</sup> Matthew Paris, *Chronica Majora* (Rolls Series) iii. 265; ii. 554.

<sup>2</sup> MS. C.C.C.C. No. 26; cf. M. R. James, *Catalogue*, p. 50.

<sup>3</sup> For these extracts see Adamnan's *Vita S. Columbae*, ed. J. T. Fowler (Oxford, 1894), pp. xlvii., lxii., Lib. i 23, i. 25

the edge of his garment overturned the ink. Some of us, from bitter experience, would be less inclined than the admiring biographer to see in the saint's prophecy an example of supernatural prevision; there are many quite excellent people who ought never to be allowed to set foot inside a student's room unless their breezy presence be regarded as a discipline for the student's character. But what we are primarily concerned with here is Columba's cell. It is called *tuguriolum*, the term applied by Jerome, in the famous letter<sup>1</sup> in which he explained to Augustine that, if Hebrew meant anything, Jonah's gourd was really ivy, to his own abode at Bethlehem—perhaps the most famous *scriptorium* in the world. But that was possibly a cave, and in any case probably of stone. The word naturally means a hut or cottage such as was used by peasants or shepherds, and we remember that St. Martin's monks at Tours, the younger of whom were scribes, lived and worked in little wooden huts.<sup>2</sup> Columba's abode is said to have rested on boards, and there is a high degree of probability that it was one of those beehive-shaped erections, built of wattles, covered with turf or peat, and resting in this case on a wooden framework, such as certainly existed in Iona and as certainly in Ireland. Such a structure if properly built might be very fairly comfortable and perfectly dry, and might have the proportions of quite a large room. It is worth while to insist upon the point because it has seemed to many

<sup>1</sup> Hier. *Ep.* exii.

<sup>2</sup> Sulp. Sev., *Vita B. Martini*, 7.

scholars that the splendour of such MSS. as the Book of Kells, or the Book of Durrow, and, perhaps we may add, of the MacDurnan Gospels, demands for their production an equal sumptuousness of environment and the existence of *scriptoria* of a kind for which there is at that date and in that land at any rate no sufficient evidence.

But if such a cell as Columba's may well have been fairly comfortable alike in respect of warmth and of dryness, it may be doubted whether warmth was a characteristic of the stone cells in more elaborate monastic buildings of the Benedictine rule. Jarrow was built of stone by masons brought from Gaul, and all our evidence shews us Bede working in his cell and not in any other place. At what date did it become customary to work in the cloister? Unfortunately, it would seem after prolonged search that at present our only answer can be that we do not know and that it varied in different places. No one would be likely to introduce the practice as a custom, especially in winter, in monasteries where a cell was the usual home of the individual monk, so that when Abbot Cuthbert comes before us<sup>1</sup> excusing the delay in sending some MSS. to Mainz on account of the bitter cold which had numbed the fingers of himself and his youths (*pueri*), they are more likely to have been working within four walls than in a cloister. In a Carthusian house in which each monk had three rooms there would have been no difficulty in

<sup>1</sup> *Monumenta Moguntina*, ed. Jaffé (1866), p. 301.

working in one of them. But cloisters for working would be the natural corollary to common dormitories for sleeping. There is a famous and often-quoted description, written in the Sixteenth century, of the arrangement of the Durham cloister for the purpose. The windows were glazed and “in every wyndowe iij pewes or carrells . . . all fynely wainscotted, and verie close all but y<sup>e</sup> forepart w<sup>ch</sup> had carved worke y<sup>t</sup> gave light in at y<sup>er</sup> carrell dourcs of wainscott: and in every Carrell was a deske to lye there bookes on; and y<sup>e</sup> carrells was no greater then from one stanchell of the wyndowe to another.”<sup>1</sup> Now the one side of the Durham cloister (the side chosen was naturally that facing south wherever possible) had eleven bays and the space available was 112 to 113 feet, so that each bay was at least 10 feet in width, which allows about 3 feet 4 inches for each carrel. At Gloucester there were ten bays; the space available was about the same, but each bay had only two carrels, which allows a width of about 5½ feet, with a height of about 7 feet. In the case of Westminster we can actually trace the transition from the general use of the cloister to the provision of a special room, the *domus scriptoriae*, from the regulations contained in the Customary.<sup>2</sup> The change must have taken place before the middle of the Thirteenth century: I have asked myself many questions about it which I cannot answer,

<sup>1</sup> *Rites of Durham*, ed. J. Raine (Surtees Society), p. 83.

<sup>2</sup> Ed. Maunde Thompson (Henry Bradshaw Society), ii., p. 97.

and I can only console myself with the reflection that about the same time Roger Baeon was writing that “the dread of appearing ignorant is the greatest cause of human error.”<sup>1</sup> It would certainly seem that the reason of the provision of the *scriptoriae domus* was not merely greater convenience, but the necessity of providing more room; and we are expressly told that it is certain that the precentor, down to the time of the making of it, was not allowed to leave the cloister without leave except to go to the tailor’s shop (*ad sartoriam*), to make ink (*incaustum*) when necessary.<sup>2</sup> If the ink were not called *incaustum*—which is said to mean strictly the liquid of oakbark or gall-nuts boiled in acid wine with iron filings or vitriol, as distinguished, though the distinction was certainly not always remembered, from *atramentum*, made with the finely ground soot obtained from burnt resin and mixed with gum and dried—one might have supposed that the visit to the tailor’s shop was to obtain some of the red pigment, made by boiling seraps of a *scarletum blanketum*, costly stuff dyed with the product of the kermes beetle.<sup>3</sup> But a forgotten writer who says that: “While I was writing these things I diluted my ink with my tears,” though he may be only rhetorical, may serve to remind us both that *atramentum* dried

<sup>1</sup> *Opera* (Rolls Series), pp. 71–72; *Opus Tertium*, c. xxii.

<sup>2</sup> *Customary* (Henry Bradshaw Society), ii. 97.

<sup>3</sup> J. H. Middleton, *Illuminated Manuscripts* (Cambridge University Press, 1892), pp. 234, 246, 249

up quickly, and of another regulation elsewhere forbidding brethren access to the kitchen save when their ink required to be thawed. In any case it was the precentor's duty to make the ink, and not only for the brethren, but by courtesy to provide it for secular scribes, just as it was his duty to provide parchment, to superintend the correction of work done, to write briefs for the monastery, and to perform all the offices of a librarian. It might well be laid down that "the precentor must be spared in many things."

We have spoken of Westminster; when we turn our steps to St. Paul's at the same period we shall find a very different state of affairs. In 1283 there is only one scriptor attached to the cathedral and he receives two loaves of bread a day. To judge from Ballock's statutes, he filled in his time by binding the books, for there is a provision of a livery of bread and beer "ad opus scriptoris et ligatoris librorum ecclesiæ," a provision which still remains in Colet's epitome of the statutes. There is also another section, however, to which it is worth while to call special attention, for it shews us that as early as the Thirteenth century places were assigned in the nave of St. Paul's for twelve scriptrores, for the service not of the church but of the people, and gives us the oath which they took to fulfil their office faithfully, and also to do nothing to the detriment of the cathedral body.<sup>1</sup> Such

<sup>1</sup> Sparrow Simpson, *Registrum Statutorum*, pp. 173, 13, 219, 78.

writers fulfilled at least some of the functions of those to be found in the bazaars of the East to-day. With whatever mental cautions we may read the late Mr. A. F. Leeah's constant strictures upon popular and even learned notions of monastic education, we shall do well to remind ourselves that the monasteries in the Middle Ages had no monopoly of secondary education, that many of their most distinguished members received the greater part of their intellectual training outside the houses to which they belonged, and that in very many parts there were more numerous and better scribes outside the monasteries than within. It is singular how little place such pursuits occupy in Lanfranc's constitutions for monastic reform, and at Abingdon and St. Albans, at Westminster and at Canterbury, there is abundant evidence of the use of the services of persons brought in from outside. An entry such as that in the Canterbury accounts in 1257 of a payment of 10s. for writing agreements made in London between Arehbishop Boniface of Savoy, the Earl of Gloucester, and the Chapter, or another in 1278 of 20s. paid to a certain notary publie for letters concerning the Tenth sent to the Roman Curia under the seal of the Arehdeacon, are natural enough: legal instruments are serious matters; and the monastery probably also regarded 40s. given in the same year to the clerks of the Justiciar "for reading our charters" as money well spent.<sup>1</sup> But it is clear

<sup>1</sup> MS. Lambeth, 242 ff. 4, 45.

that copyists were often brought in to do work which it might have been expected that the monks would have done for themselves, and at certain periods in the Thirteenth century it seems very doubtful whether the Prior and Chapter of Canterbury actually wrote any of their own formal letters.

In his very valuable book<sup>1</sup> on *The Papal Chancery* Dr. R. L. Poole has provided the student with a wealth of information down to the time of Pope Innocent III. upon a subject in regard to which very few are competent to speak. The period which he selected enabled him to shew the distinction between the *notarius* proper, who was strictly an ecclesiastical scribe and in minor orders, and the *tabellio*, who, whatever his aspirations, was strictly speaking *not* an ecclesiastical scribe and need not be in orders. We can trace the growth of a confusion which is complete long before the post-Reformation documents issued by the Master of the Faculties in England, in which the titles are used as alternative and it would seem equivalent. Moreover, in Dr. Poole's description of the influence of the Imperial upon the Papal Chancery, the student may find an explanation of a feature which he can scarcely have failed to notice in English episcopal registers of a variation in the attesting notary's designation of himself as "by apostolie" or "by imperial and apostolic authority," and the notary of the present day may please himself with the reflection, that he is the only person whose

<sup>1</sup> Cambridge University Press, 1915.

attestation of a document is recognized as valid in all civilized countries. But there is another feature which the palaeographer, and especially the British palaeographer, will recall with interest. In a famous eulogy upon Benedict Biscop, Bishop Stubbs has said that "the civilisation and learning of the 8th century rested on the monastery which he founded, which produced Bede, and through him the school of York, Alcuin and the Carolingian school, on which the culture of the Middle Ages was based."<sup>1</sup> The old Papal notaries developed a handwriting of their own—the curial hand, a departure from which probably seemed to them as indecent as the ratification of a Treaty with a wafer Great Seal does to some people nowadays: they were conservative folk; did they not continue to use papyrus till the Eleventh century? But the beautiful Carolingian minuscule of the Imperial Chancery won its way, with truly curious results in the transition.

It would be going beyond our proper scope to deal with the extra-ecclesiastical activities of ecclesiastical or quasi-ecclesiastical persons even farther than has perhaps already been done. And hence we must pass over chancellors who were or became bishops and archbishops, and dignified clergy who sat at the Exchequer when in the opinions of chroniclers and others they could have been better occupied in less secular pursuits, though

<sup>1</sup> *Dictionary of Christian Biography* (John Murray, 1900), s.v. i., 1309.

it must be admitted that the stories of Gervase, the Twelfth-century clerk of the Chancellor, Chaplain of St. Stephen's, and alleged writer of the Great Roll of the Exchequer, or of Richard Fitz-Neal, Bishop of London, and author of the *Dialogus de Scaccario*, are sorely tempting. But it may be permissible to close this section by suggesting that the activities of chantry priests, not only in education but as ecclesiastical scribes, are capable of a good deal more illustration from a patient study of records than they have received, and that parish clerks, since they were once in minor orders, have at least a claim to passing notice in this connexion. The space gained, however, by necessary omissions shall be utilized by saying something further of the ecclesiastical scribe as copyist, as man of business, and as an original author.

The ecclesiastical scribe in a monastery wrote not for money or fame, though fame might come to him, especially if he were skilled also in illumination, as was William the well-known "pietor" in the reign of Henry III. The monk wrote for the glory of God and the good of the Church. One cannot help suspecting that the ideas even of scholars are sometimes thrown a little out of perspective by the splendours of famous codices which are the treasures of great libraries and the glory of the private collections of millionaires. The Textus or Gospel book or the Missal on the high altar of a great church, a great MS. Bible of the largest volume and written on the finest

uterine vellum, the *Horae* of a Queen—these books on which we feast our eyes to-day—are no doubt but a remnant; but it is very easy to exaggerate the total number of those that can ever have existed. The great Missal finished in 1384 which, as Flete tells us, Abbot Litlyngton gave to the high altar of Westminster, took two years to make. Thomas Preston the scribe received for his pay £4 and 20s. worth of cloth, the large illuminated initials cost £22, and the total cost was £34 14s. 7d., or at the very least £400 of our money. In that case as in many others a scribe was brought in from outside, but the Abbot himself not only gave but made other books for the Divine Office, to be used for the chapel of future abbots, and for the infirmary.<sup>1</sup> Chaucer's monk who of "Tragedies had an hundred in his eelle" does not profess to be a typical figure, though it is rather hard when he is told: "Your tale anoyeth al this compayne." But read the old Durham catalogues, or Dr. James' reprint of those of Canterbury and Dover, or Miss Bateson's of Syon Monastery,<sup>2</sup> or Dr. S. R. Maitland's study in *The Dark Ages*, and say how you would like to face the prospect of having to make a copy of one of a good many of the works there

<sup>1</sup> Flete, *History of Westminster A' bey*, ed. J. Armitage Robinson (Cambridge University Press, 1909), p. 135. Cf. W. R. Lethaby, *Westminster Abbey and the Kings' Craftsmen* (Duckworth, 1906), pp. 280–281.

<sup>2</sup> J. Raine, *Catalogi Veteris* (Surtees Society); M. R. James, *Ancient Libraries of Canterbury and Dover*; M. Bateson, *Syon Monastery* (both Cambridge University Press).

enumerated or even of a whole Bible, and remember that you would have had to copy the work allotted to you, not one of your own choice. Montalembert will tell you that the monks in their cloisters were never warmed; Mr. Middleton will bring before your mind the pleasing picture of a small portable brazier in your wooden carrel. I suspect that in most cases if you were allowed to put your hands occasionally round a “fyreball” such as was used in the churches you were uncommonly fortunate. Of course you might be an enthusiast like Otholonus, a monk at Ratisbon in the Eleventh century, whose activities are described by Sir Thomas Duffus Hardy from Mabillon: “Besides the books which I wrote to give away for the edification of those who asked for them, and of others to whom I gave them unasked, I wrote nineteen missals, ten for the abbots and monks in our own monastery, four for the brethren of Fulda, five for those in other places, three books of the Gospels, and two with the Epistles and Gospels, which are called Lectionaries; besides which, I wrote four Service books for matins.”<sup>1</sup> To many a scribe the bell summoning to service must have come as a welcome relief; and if to some it was an unwelcome interruption, yet there is a virtue in holy obedience, as St. David discovered, according to Giraldus Cambrensis, when, having been interrupted in copying the Gospel of St. John, he returned from church to find that the

<sup>1</sup> *Descriptive Catalogue of Materials* (Rolls Series), iii., p. xxix.

column he had begun had been finished by angelic ministrations in letters of gold.<sup>1</sup> This story is somewhat spoilt by the addition that the Gospel was not allowed to be finished but was shut up in a costly cover, and that ill befell any man who sought to open the book to verify the marvel.

But we will suppose our scribe seated in his *scriptorium*. The volume that has been allotted to him to copy has been taken from one of the *armarioli* or cases along the side of the wall of the cloister or in the library, and he places it before him propped up either upon a desk or—*horresco referens*—sometimes upon another book or books, if pictures do not lie, as students have done and will do in spite of librarians from age to age. Librarians may sometimes be a little tiresome, but even a librarian and a Briton may be excused a groan of indignant horror if he sees, as these eyes have seen, the open leaves of the Codex Amiatinus, one of the wonders of the world, wherewith Ceolfrid and Jarrow repaid the literary debt of Britain to Italy, being used in the Laurentian Library at Florenee as a comfortable cushion for two Teutonic elbows. Our scribe has ruled with a metal point upon his parchment or vellum the lines upon which he will write, and he begins with a quill or a metal pen to make his copy. If he be a careful copyist he will reproduce his example with considerable fidelity, even though he may not understand it: while, even if on the whole he

<sup>1</sup> *Giraldi Opera* (Rolls Series), iii. 393.

does, there are pitfalls for wandering attention or tired eyes. The scribe who represented the Church of All Saints by “Ecclesia omnium singulorum” may be paying a tribute to the uniqueness of personality, but is likely to have been more familiar with leases. But let us take an earlier example of a writer's dangers. He is copying Virgil's *Aeneid*, shall we say—I borrow the illustration from Roger Bacon—and without the change of a single letter he may write (viii. 83), either wrongly “Viridique in littore conspicit ursus”—“on the green marge the bear beholds”—or rightly “conspicuit sus”—“on the green marge a sow is seen.”<sup>1</sup> Or in another case, not understanding the “n” with a stroke over it, which means “enim,” he may transcribe it as “nomen.” There are few books from which within their limits the student can learn so much about abbreviations and contractions as from Professor W. M. Lindsay's *Early Irish Minuscule Script*, and *Notae Latinae* (A.D. 700-850), and he will find them an invaluable training for the study of later periods—such, for example, as that illustrated by Messrs. Johnson's and Jenkinson's *English Court Hand* (1066-1500). He will find reason also to think that misunderstandings of contractions begin much earlier than has sometimes been supposed; and he will be a very languid student of palæography if he is not interested in the illustrations of our insular method of contracting “autem,” the method in Spain, and that elsewhere.

<sup>1</sup> *Opera* (Rolls Series), p. 517. *Compendium Studii*, c. xi.

If the MS. is to be illuminated the scribe will leave space for the initial, whether it is to be subsequently put in by himself or, more usually, by another hand. Whether he ever allowed himself the amusement of a pen-and-ink picture in the margin would depend upon the nature of the book and the circumstances of its preparation. If he did not do so it was fairly certain that in the case of some books a later scribe would; and the seemliness or frivolity of the illustration was certainly not always determined by the character of the contents of the volume.<sup>1</sup> A very amusing picture sometimes redeems a very dull book for others besides the original scribe or the original possessor.

The preparation of books in this way was of course slow work; but given time and workers it was possible for a very large number of copies to be made. In the ease of the secular scribes, on the other hand, it is quite clear that the more expeditious method was adopted of dictation by one person to a large number of others who wrote as he read; and it seems equally certain that the same procedure was followed in the monasteries in the case of works not of primary importance. MSS. produced in such conditions will of course be exposed to further possibilities of error due to varying education, defects of hearing, and similar causes. Even in the case of service books the injunction in

<sup>1</sup> Thus the solemn pages of Courtenay's Register are decorated with two most beautiful church bells, inscribed "Romeneye," when the Archbishop lays the place under an interdict.

one of the Customaries that the novices are to be trained to be so familiar with what they have to sing as not to be disturbed by a possible error in writing, if any should meet their eye, suggests that such errors were not unknown. And anyone who has ever studied Dr. Fairfax' great St. Albans music-book, now at Lambeth, or any similar work, will realize how easily mistakes might occur, especially in the way of omission and particularly where the same word happens to strike the eye in two places of the exemplar and the intervening words are overlooked. And Bede's complaint of the carelessness of copyists and correctors and specially of mistakes in transcribing numbers is familiar to us all.<sup>1</sup> I confess that when I read strictures upon the unlearned wight who read "mumpsimus" for "sumpsimus" I recall with sympathy that even my learned predecessor Ducarel was led astray by that Thirteenth-century "S," shaped like a B which has fallen to the left and looks like an M, into writing "Menenaker" for "Sevenaker"—the modern Sevenoaks.

God gave abbeys, but the devil gave cells and cellarers—Giraldus recites the apophthegm with as much gusto as he does the common gibe "malus monachus bonus clericus est,"<sup>2</sup> but there is an enormous amount of still unutilized material for social and economic history in the accounts of the ecclesiastical scribe in his capacity of man of

<sup>1</sup> *Beda Ep. ad Plegwinum; In Sam. Lib. II. prolog.*

<sup>2</sup> *Giraldi Opera* (Rolls Series), iv., p. 84.

business, if only they could be studied comparatively. The original rolls, of course, have often perished, but not the summaries entered in monastic account books. Do you realize that we can study the life of the monks of Canterbury during forty years before there is any extant Archiepiscopal Register ? You can see what each of the chief officers of a Benedictine Monastery spent, the presents they gave to the king—two oxen *ad ex-hennium Domini Regis* 24s. 6d.; and to the Queen—*una cupa data Reginae* seven marks, in 1273; the five shillings spent on a ring given to the wife of Solomon of Dover in 1272; the sixty-five *duodenae* or quires of twelve leaves of parchment bought in 1278 for 55s. 2½d.; the red thread for the seal costing 4d.; the purchase of “haneperes” in 1279 “ad litteras portandas” for 15d.; the half-yearly salary of 6s. 8d. paid in 1304 to William “Sirugieus,” no doubt for blood-letting; to say nothing of boots for the novices and the 9s. paid by the monks to four barbers for their services, in preference to cutting each other’s hair and shaving each other’s crowns. You can see the cost of horse hire and of journeys, and, more important still, year by year the “Work in the Town” with its details of wages of carpenters and builders and plumbers; yes, and of the plumber’s boy; and the cost of the materials they used. These things are worthy of study,<sup>1</sup> and we have only touched the fringe of what might be said on the subject of accounts and letters.

<sup>1</sup> MS. Lambeth, 242 *ff.* 15<sup>b</sup>, 9, 44, 241, etc.

Of the ecclesiastical scribe, monk or not, as original author it would be easy to say much, it is very difficult to say a little. His importance we can realize, if indeed we ever doubt it, the moment we make the simple experiment—to take only a single field—of eliminating him from the original authorities for English history and ask ourselves how far it is possible to construct an intelligible series of pictures from what remains. And there were other fields besides history in which his services were great. Of course, it is easy to exaggerate the erudition of these writers: the truly amazing list of earlier writers collected by Mr. Plummer as known to Bede<sup>1</sup> shrinks to comparatively few of which you find traces when you read the *Epistolae Cantuarienses*, and Roger Bacon laments that he has tried for twenty years to get hold of the works of Seneca and has failed.<sup>2</sup> Of course, we may say that their historical methods were uneritical, their scientific knowledge rudimentary, and their credulity beyond belief; but if we would judge a man truly we must learn to see him in his time and place, and not judge him by a standard of which he had no conception or for the omission of things which he could not have known. M. Jusserand has made the method of collecting information for a mediaeval contemporary chronicle familiar to many an English reader who

<sup>1</sup> Plummer, *Bedae Opera Historica* (Oxford University Press, 1896), I., pp. i-lii.

<sup>2</sup> *Opera* (Rolls Series), p. 56; *Opus Tertium*, c. xv.

would never have read it in the annals of Worcester Priory. "A register was prepared, with a loose leaf [*scedula*] at the end" (we vaunt ourselves greatly, do we not, on our much-advertised modern appliances?), "on which the daily events were inscribed in pencil, 'eum plumbo.' At the end of the year the appointed chronicler, 'non quicunque voluerit sed cui injunctum fuerit,' shaped these notes into a continued narrative, adding his remarks and comments, and inserting the entire text of the official documents sent by authority for the monastery to keep, according to the custom of the time. . . . The loose leaf was then removed, and a new one placed instead in view of the years to come."<sup>1</sup> Naturally this only applies to a certain proportion of chronicles and histories. There were many written much more in accordance with modern methods, though, unfortunately, the modern ecclesiastical dignitary who writes a book does not follow the estimable example of Giraldus in entertaining, with a befitting hospitality, all who are willing to come to hear it read. Many of these ecclesiastical scribes were men of humour, as well as of learning: they had a shrewd, sometimes one may think an almost too shrewd, knowledge of the world, and they loved a good story. Hundreds of years after it happened, Giraldus, as ecclesiastical historian, still chuckles over the story of the Emperor asking the most learned

<sup>1</sup> Jusserand, *Literary History of the English People* (Fisher Unwin, 1895), i. 197.

member of his court, and of his age, a man sprung from the northern parts of Britain: "What is the distance between a Seot and a sot?" and receiving the answer "Tabula tantum"—"Only a table"; it is the voice of Aleuin in the aeeents of Jowett. And some very humble scribes could write as well as any letter-writer of to-day, as you may see if you will read the letters of the unhappy monk of Canterbury sent in 1188 on a mission to the Great St. Bernard. He is nearer Heaven, so that it is natural to suppose that his prayers will be the sooner heard; but Hell is more present in his mind than ever before. He cannot stand: yet to slip is death; and the ieicles are hanging from his beard.<sup>1</sup> He was not a great heroic soul, but let us tender him our sympathy, and take our leave of him and of his brethren at least with gratitude for the pleasure and instruction that they have afforded to the students of a later age. We may become their critics: we shall not cease to be their debtors.

<sup>1</sup> *Epistolae Cantuarienses* (Rolls Series), p. 181.

# ECCLESIASTICAL RECORDS

## I

### ADMINISTRATIVE AND GENERAL

THE study of ecclesiastical records is as fascinating to the student as the description of them is embarrassing to the lecturer. To reduce the subject-matter within a reasonable compass, he must restrict his field and forbear to discuss such interesting topics as are suggested, for example, by the *Regesta Pontificum* or the *Calendars of Papal Registers* or *Papal Letters*, or by Dr. R. L. Poole's fascinating book on the Papal Chancery. He cannot allow himself such interesting divagations into continental parallels as are to be found in such a work as Dansey's *Horae Ruridecanales*.<sup>1</sup> He will have before his mind the fear of seeming to advanced students too elementary and to the less advanced too difficult; and, on the other hand, he must choose between the rather gruesome simplicity of a series of ingeniously articulated skeletons and the human interest, abhorrent to the specialist, of flesh and blood and the spirit which, for good or evil, gave them life. Yet, as the subject-matter bears at least a family likeness to the 'farrago'

<sup>1</sup> Second edition (Rivington, 1844).

of the heathen satirist, we will challenge criticism at the outset with a definition, and say that we propose to consider an ecclesiastical record as ‘a record made by or for an ecclesiastical person in relation to his functions.’ This may be reminiscent of Bishop Wilberforce’s famous definition of an Archdeacon, but at least we shall have secured an attachment to a human being, and can proceed to investigate his activities, whether in an administrative or a judicial aspect, with perhaps a class of ‘documents subsidiary’ as a reminder that even an archivist is subject to human weakness, and that the Lambeth Librarian not less than the Court of Chancery may be custodian of things which it would be difficult to classify.

We will begin with the records of an Archbishop or a Bishop, not merely because it is the most convenient method of procedure on account of the extent of the field which will thereby be covered, but also because it is natural to suppose that such records will be better kept than those of lesser ecclesiastical dignitaries, although it must be frankly admitted that this natural supposition is sometimes found to rest upon rather a weak foundation. We are often inclined to treat records, which are, of course, notes of happenings, as though they themselves just happened, instead of being, as they are, the product of a human intelligence subject to human limitations; and we are apt also to consider them without due regard to the purpose for which they were made. No doubt to adopt

any other course demands the exercise of imagination, of which we have a deep-rooted distrust, and which may, of course, easily lead us astray; but it is hard to see how we are to interpret, let us say, a Bishop's register if we leave out of account two personalities at least which contributed to the making of it—the Bishop himself and the registrar, the scribe of his acts.

Let us carry our minds back to the date of our earliest English registers of Episcopal acts—the first quarter of the Thirteenth century. The rule of John is drawing to an inglorious close, and the long reign of Henry III. is about to begin. What shall we find if we go into an Episcopal business room? First of all, almost certainly, a kalendar and a *Formulare*. It is not a mere accident that ecclesiastical forms preserve, *mutatis mutandis*, a substantial identity of language for centuries, and that not only in the same diocese. No doubt both in earlier and later times the records themselves often served the purpose of typical examples—some of the Lambeth Act Books of the Nineteenth century are scored with pencil-marks which shew it—but the earliest registers postulate collections of forms. Such precedent books are frequently repulsive in appearance and highly detrimental to the reader's sight, while the contractions are often so rigorous as to make them mere gibberish to any but the practised student. They have therefore been little thought of or cared for by later custodians; and yet the English forms

used to-day are often found, when we make allowance for changed circumstances, to be almost literal translations of the Latin models. The effort made under the Commonwealth to enforce the talking of Latin and Greek in the Universities did not extend to the office of Firstfruits in the Exchequer, as you may see by reference to the Composition Books. A return was made to Latin at the Restoration, but in the interval many law clerks and even, it may be, some Bishops had become a little rusty in the Humanities, since we find in 1689 Peter Mews, Bishop of Winchester, who had been a military officer under Charles I., solemnly certifying the Barons of the Exchequer that 'collavimus' the church of Chilbolton to Thomas Sayer.<sup>1</sup>

The final change from Latin to English began in the Canterbury forms about 1733, with what imperfect success, there or elsewhere, anyone may judge who is familiar with the barbarous jargon talked by legal officials at the confirmation of a Bishop-elect. But of the old books of forms dozens still remain. They are not legal evidence, but they are often made up from actual documents, and of their value to the erudite a recent paper on records extricated as well as extracted from a Lambeth volume for the *English Historical Review* is sufficient evidence.<sup>2</sup> No apology is needed for

<sup>1</sup> Public Record Office: Exchequer Firstfruits, Bishop's Certificates, Winton No. 6.

<sup>2</sup> By Miss Rose Graham (*Eng. Hist. Rev.*, April, 1918, pp. 213-225).

calling attention to them, since they were made for use and are a useful indication of subject-matter. Forms of institution and induction, commissions, inquisitions, proxies, citations, licencees, dispensations, acquittances, compositions, indulgences, letters dimissory, manumissions, certificates of election or of approbation of an election—all these things and many more will be found represented, and the number grows as each age provides forms for new purposes while still carrying on much of the old; for if the Law and the Church are the two least revolutionary elements in English life, the ecclesiastical lawyer is surely endowed with a double portion of the spirit of conservatism. It is not *always* his fault that, owing to various ‘changes of the times,’ you must now look for many of these and other ecclesiastical records in libraries, public and private. When Thomas Oughton, who must always be named with honour among students, was given, in the reign of George II., a sight of the Harleian Collection, he ‘stood amazed at so great a treasury of pearls.’ And the wise student in quest of ecclesiastical records which have strayed will never omit to consult the catalogues of the Cotton Collection or of the Tanner MSS.

What else shall we see in the business room where the scribe—the one man who knows and cares not why or wherefore but *how*—is tracing on parchment with painful care the deed or the letter which registers or gives effect to his master’s

will? Most probably we shall find a survey or 'extent' of the episcopal estates, for the Bishop is a territorial magnate with obligations both to his tenants and to the Crown. It is true that no copy of the 'Bolden Buke' is said to be extant of earlier date than A.D. 1300; yet no one doubts that it was made by Bishop Hugh de Puiset or Pudsey in 1181, and that, like Bishop Hatfield's Fourteenth-century survey, it must represent a kind of compilation not peculiar to the great diocese of Durham.<sup>1</sup>

And there, too, on a rough wooden shelf, or piled up in a corner of the barely furnished room, are a series of *cophini* which we may render 'boxes' with a shrewd suspicion that they soon became stout canvas bags. Each is labelled with the year. Let us open one. The Lord Pope has been pleased to address to the Archbishop of the province 'bulls' and 'letters apostolical' relating to a variety of subjects, including, it may be, the disposition of a vacant piece of ecclesiastical preferment, or, as is just as likely, of one that is not yet vacant; or it may be as to Tenthos or the Denarii of the Blessed Peter or other dues, or the procuration to be paid to the nuncio of the Apostolic See now present in England. Of such documents copies will have been made and transmitted to the Bishop, or there may be other papal communications directed to the Bishop himself. It will be very necessary to keep them, at any rate, until they have been formally entered, but sometimes

<sup>1</sup> Both published by the Surtees Society.

longer, for the entry may only be a note of the *cophinus* in which they are to be found. At a later date those that have survived the corrosive action of damp or of mice will no doubt be flattened and bound up.

Now, the existence of such documents and their purpose will entail that of another record which you will find somewhere in the room—viz., a *Taxatio*, or valuation of ecclesiastical benefices, a compilation of some moment at a time when these benefices were the milch-cows both of Pope and King. It is scarcely necessary to add that we shall not be so unwise as to suppose that the one which bears the name of Pope Nicholas was the first of its kind, any more than to ascribe infallibility to the edition of it published by the Record Commission. Let us open another *cophinus*. It holds a series of rolls, great and small—the *Comptotus* or account rolls of the steward of the episcopal manors. At a later date these will be kept in a separate room, for he is a very important person with dignity befitting his responsibility, and with others under him. A man like Adam Torlesse in the Sixteenth century or like Ralph Snow in the Seventeenth at Lambeth was one of the most important persons there. We find an Archbishop's principal Steward, indeed, in the Commission of the Peace for several counties, ranking with the Librarian in respect of appropriate offerings from Bishops, and having the chaplains sitting in decent humility at his table. Somewhere

in the room, too, will be found a collection of charters and grants.

'Somewhere in the room' is an indication of a judicious, if unsatisfactory, vagueness, which is not without purpose both in regard to the *Taxatio* and the charters. For while we have been taking a cursory survey of his camera the scribe has completed the document on which he has been engaged, and which is wanted for to-day or to-morrow, and is free, if he has the energy, to make a permanent note of the miscellaneous collection of parchments of one kind or another which have been accumulating. Let us be quite certain that they will have been accumulating, for if an immediate note or transcript had been made you would not find the frequent misplacements in order of date with which we are all familiar. And sometimes, it must be admitted, the Bishop is a sore trial to his 'man of business.' He is moving about from manor to manor or, much against his will, he has gone to London or elsewhere for Parliament or Convocation, in deference, perhaps, to the caustic observation of the Archbishop that if he is well enough to ride about his diocese he is well enough not to shirk Bishops' meetings; or at a later date, it may be, much more against his will, he has left London to visit his diocese, or he may have gone abroad upon urgent public affairs of the Kingdom, or to pay a visit *ad limina Apostolorum*. In the last two cases he will certainly have appointed a Vicar-General, and

the scribe is happy—for, whatever may be taking place abroad, at home business is as usual. But in the other cases we may be sure that many predecessors had found themselves in the position of the Seventeenth-century scribe who lumps together a great number of notes of miscellaneous acts with very inadequate information as to dates, etc., and records that it is the best he can do because the Archbishop has been going about without his secretary.<sup>1</sup> Against this not unnatural grumble of the man to whom exactitude is second nature we may set the admiring comment in the Fourteenth-century London register of the ill-fated Simon of Sudbury, where the scribe, after recording for future reference the forms connected with monastic elections, adds: ‘In businesses of this kind and in others he shewed himself gentlemanly to everyone, and very rarely makes himself *difficile*.<sup>2</sup> But for the benefit of other students we may add that anyone who finds a record of an ordination by a Bishop who is also head of a college had better recall the praiseworthy aphorism of Captain Cuttle.

Where will our Thirteenth-century scribe make his transcript of documents or a record of those which he merely notes without transcribing, and what kind of things will he record? Let us turn to the earliest York register for guidance. Here are two great rolls, the first 42½ feet long, the

<sup>1</sup> Lambeth Act Book, i. 17.

<sup>2</sup> *Registrum Simonis de Sudburia*, f. 107 (Canterbury and York Society), p. 86.

second 38 feet, written on both sides. There was possibly once a third, for the first ten years of the pontificate have no record. These rolls of parchment are made up of smaller sheets, each about 2 feet long, joined one to another by string. A difficulty presents itself at the outset. Three times in the last half-century we have been assured in almost the same words, but with a cumulative weight of authority, by Canon Raine, Mr. Phillimore, and last, but not least, by Mr. Fowler, whose little pamphlet on *Episcopal Registers*<sup>1</sup> it is to be hoped that everyone will buy and study, that this 'register' had probably no predecessor. The argument is this: It heads the list in the Fourteenth-century York inventory, and had similar collections existed it is scarcely possible that not in a single diocese should an earlier one remain, though many monastic charter books, exposed to greater peril of destruction, go back to an earlier date. Dissent from such authority is temerarious, and perhaps only a tyro would venture it; but let us be a little daring, and ask a few questions. How many records of a Commissary Court do we know to survive of earlier date than Elizabeth, or even then? How many records of Consistory Courts, in an independent form, anterior to 1450? How many records of the Court of Arches earlier than the Seventeenth century?

Let us consider this point. The Court of Arches,

<sup>1</sup> R. C. Fowler, *Episcopal Registers of England and Wales, Helps for Students of History*, No. 1 (S.P.C.K.).

like the Consistory Courts, certainly existed in the Thirteenth century; it had even then archives of its own, of which something will be said under judicial records, and it was using at that time the same forms in the main as it used centuries later. In the case of the proceedings of the Consistory Courts it may be said that such records as it was deemed necessary to keep were entered in the episcopal register; and, of course, there are examples of such entries, though no one could possibly contend that they represent a tithe of the business done. But on that assumption, if there were no episcopal registers before 1209 or 1215, neither were there any permanent records of Consistory Court Acts. It sounds improbable. We can now go a step farther back. There is evidence for the existence of the Court of Arches in the Twelfth century, and at no period of its history with which we are acquainted were its proceedings or sentences entered as a matter of practice in the Canterbury registers. Yet so far as we know it was at all relevant times a Court of Appeal for the Province of Canterbury. Are we to suppose that no records of its proceedings were permanently preserved when they must at least sometimes have been needed for further appeals? In other words, the negative argument in this case proves more than we are perhaps readily prepared to believe, and it may be suggested with some confidence that the same may be true in regard to episcopal registers. We will add further that,

while secular records were being more or less methodically kept long before the Thirteenth century by semi-ecclesiastical persons, it is scarcely likely that episcopal acts officially drawn up by similar persons were left everywhere entirely without permanent record.

Let us now proceed to consider some characteristics of episcopal registers. And first in regard to their form. At York, and at Lincoln at least until Oliver Sutton, who died in 1299, the earliest ones are rolls. But at an earlier date than 1299 in some dioceses—*e.g.*, Exeter, Worcester, Hereford, Canterbury—and at a later date in many other dioceses, they are in book form—a form which made for convenience and possibly, in some cases, contributed to their preservation. A curious feature in Archbishop Giffard's register suggests that the entries were made on leaves already bound up, the book being divided into sections, and any blank leaves at the end of a section being used for the insertion of supplementary or omitted documents. In the case of the Canterbury registers there is some reason for thinking that this practice of first making the book and then writing in it was at any rate not invariable after the third quarter of the Fourteenth century, stronger reason sometimes in the Sixteenth to the Eighteenth centuries, while in the Nineteenth century and at the present time the binding waits until an Archbishop dies or the accumulation of quires has become so monstrous that something must be done with them.

Archbishop Moore's register weighs over 30 pounds and Archbishop Benson's still more.

Secondly as to ownership. It is suggested that the registers seem to have been considered by some of the early Bishops as their private property, and in support it is pointed out that Archbishop Giffard's York register is contained in the same volume as his register as Bishop of Bath and Wells, and that Archbishop Kilwardby is said to have carried the earlier Canterbury registers with him to Rome. But we may observe first that Giffard's tenure of Bath and Wells was short (he was succeeded after less than two years by William Button, the patron saint of dentists), and his retention of the register may have been due originally to quite different causes from an idea of proprietorship, just as John Stafford brought Bath and Wells court rolls to Lambeth on his translation; and, secondly, in Kilwardby's case the registers were required for the prosecution of a suit at the Court of Rome. In any case the alleged claim was not admitted, and though such registers might be retained through an oversight or as a precaution, efforts were certainly made to secure their return—e.g., as by Edmund Laey, Bishop of Hereford (1417-1420).<sup>1</sup>

Thirdly as to contents. We are told that originally the registers were a collection of precedents made by the scribe, with such additional notes as he judged it convenient or interesting to add.

<sup>1</sup> See Lacy's Register, f. 8 (Canterbury and York Society), p. 22.

There may be truth in this so far as it goes, but it is a very inadequate account of the phenomena presented by the earliest rolls known to us, those of Hugh Wells, Bishop of Lincoln (1209-1235). Except that in the earlier entries dates are omitted, the system of arrangement has all the characteristics of an official record, and very many entries are such as could by no means be required as forms of precedents at any rate, though it is obviously impossible to say that the Thirteenth-century scribe may not have deemed them as interesting as they are to us. But so far as can be judged from the abbreviated entries in the Surtees Society's editions, our inference will not be different in the case of the two earliest York collections, the registers of Walter Gray (1216-1255) and Walter Giffard (1266-1279). In the former of these the separation of spiritual and temporal matters, inscribed respectively on the recto and the verso of the membranes, though not perfectly carried out, is noteworthy as at least an attempt at an orderly arrangement. Of the general contents of registers some indication has already been given in the account of the forms of precedents. A great deal more might be said, for they are a calendar of an extraordinary variety of subjects, including all those enumerated earlier under precedent books, and ranging from ordinations, whether of vicarages or clerks, to household accounts or the importation of setters from Normandy. But Mr. Fowler's account in the little work to which I have referred enables me, if rather

unwillingly, to pass over much and so to save space for other features to which I must call attention, though they may be less attractive than numerous royal letters, a detailed account of a campaign in France, proceedings against the Lollards,<sup>1</sup> or an Archbishop's sermon before departing to Rome with the words of the Prodigal Son upon his lips.<sup>2</sup>

Reference has been made to the office of Vicar-General, in modern times a permanent institution, but in ancient days by no means universally or even usually such. In the case of the absence of a Bishop for any prolonged period or of the vacancy of a see it was clearly necessary to appoint someone to perform all such acts as could lawfully be performed by anyone not in episcopal orders, and to draw up a methodical record of acts so performed to be inserted in the register or filed separately. From at least the Sixteenth century onwards, however, you will find the Vicar-General of Canterbury a permanent official, for it was then as unusual for an Archbishop to institute personally to a benefice as it became for him to ordain, and the Vicar-General's acts will be found in the register side by side with the Archbishop's. Should a see be vacant, the spiritual jurisdiction lapsed, broadly speaking, to the Archbishop of the province, and it is to the provincial not the diocesan register that

<sup>1</sup> Register of Jo. Trefnant, Bishop of Hereford, ff. 97–122 (Canterbury and York Society), pp. 231–359.

<sup>2</sup> Kilwardby's sermon on St. Luke xv. 18, contained in the Register of Jo. de Pontissara, Bishop of Winchester, f. 90, (Canterbury and York Society), pp. 359–360.

we must look for the record of the acts performed by the official whom he appointed. Should the archbishopric also be vacant, then, broadly speaking, the official was appointed by the capitular body of the metropolitical see, and the acts could be entered in their *sede vacante* registers, books of the highest importance and interest, to which far too little attention has been paid.

We have said that the above statements are true 'broadly speaking,' because there are exceptions. In the first place, as a sequel to a bitter contest, that masterful Archbishop of Canterbury, Boniface of Savoy, whose register, could it be recovered, would be interesting reading, for on one occasion he suspended the whole of the suffragans of his province, agreed to a composition of which several copies are still extant.<sup>1</sup> By this, in the case of a vacancy in the sees of London, Sarum, Lincoln, Worcester, and Norwich, the Chapters are to nominate to the Archbishop three persons, of whom he is to choose one to execute episcopal jurisdiction *sede vacante*; and the acts of the official so appointed are entered, not in the provincial, but in the diocesan register. If the archbishopric be also vacant, he will be chosen by the Dean and Chapter of Canterbury. In the second place, the anomalous position of the bishopric of Durham often led to a conflict with

<sup>1</sup> See e.g. H. Bradshaw and Chr. Wordsworth, *Lincoln Cathedral Statutes* (Cambridge University Press), i., pp. 311-315, and Chr. Wordsworth, *Statutes and Customs of Salisbury* (Clowes, 1915), pp. 100-110 (18 Jan., 1262-63).

York on the vacancy of the see, even causing a most unseemly dispute in our own time, when Bishop Lightfoot died just before an ordination. Thirdly, during a metropolitical visitation all ordinary jurisdiction was suspended by the Archbishop's inhibition throughout the diocese visited, and acts which would normally have been performed by the Bishop were executed by the Archbishop or his commissary, and entered in the provincial register. Fourthly, the same procedure was and is adopted in the case of all inferior jurisdictions during an Archbishop's visitation of his own diocese, and by any Bishop during his own visitation.<sup>1</sup> Fifthly, by a curious custom which, like many other abuses, had many centuries of history, and which lasted till the Nineteenth century, the Archbishop of Canterbury claimed before the consecration of a new suffragan the right to present a clerk and give him collation to any one benefice in the Bishop's patronage on its next avoidance, the said benefice being chosen at the time of the confirmation of the Bishop-designate. If the Bishop died or was translated before the benefice so chosen fell vacant, this right, which was called the Archbishop's Option, lapsed; but if the Archbishop died and the Bishop lived, the option was disposable by will, so that we find, for example, Mrs. Cornwallis presenting to several benefices in the exercise of this right after her husband's death.<sup>2</sup> The collations were entered in the provincial register.

<sup>1</sup> This is not, however, the case at Exeter.

<sup>2</sup> Lambeth Act Book, xi. 459.

We have dealt, though somewhat summarily, with the general features of the history and composition of an episcopal register; but it must be pointed out that some dioceses never possessed a register of the type described. This does not mean that, *e.g.*, in the post-Reformation diocese of Peterborough there were no episcopal records, but that the records kept were divided into separate classes kept separately and relating to a limited field. And in the provincial registry of Canterbury itself a double series was begun soon after the Restoration. But long before the close of the Sixteenth century devices had been adopted to lighten the burden. Summaries of household expenses, surveys, etc., were kept on separate rolls, at any rate from the time of Cranmer, and probably earlier. The rolls for Cranmer's and Parker's time still remain, but in private possession, through having been mixed with the personal documents of a former Steward—a cause of dispersion for which allowance is not sufficiently made. A search might reveal dozens more still in existence.

A mental picture has been essayed of a Bishop's business room in the Thirteenth century. What shall we find if we move on 450 years, and pay a visit, let us say, to the provincial registry of Canterbury, since that offers the best opportunity of observation? It will be the same sort of room, it may even be the same room, but the mere pressure of accumulation will have caused the muniment-room to be separated from the office,

and the steward will have his own apartment. Bound or unbound, the current register will be in the office. Its leaves have now almost reached elephant folio size, and its character has somewhat changed. Documents relating to the consecration of Bishops, to visitations, to institutions and other matters relating to benefices, will still be found entered in it. But if we wish for the fine variety of the old registers, to learn of leases, corrodies, dispensations in plurality, ordinations, confirmations, licences to curacies, or of chaplains to regiments or to ships, or even the fitness of a native of Manhattan to receive Christian baptism, we must turn to a new series of paper volumes in folio, in which, from about 1663 onwards to the present time, these and a hundred other things are set down in a sort of daybook. Registers have names, these volumes only numbers, and the methodical scribe proceeds from Amurath to Amurath with only a gap of a page or two after recording that the Archbischop died in due form in the presence of his secretary.

There will be other records in the room well worthy of note—visitation returns, great bundles of miscellaneous letters, sometimes neatly docketed by the Archbischop himself, who, if, like Secker a century later, he is methodical, may even be found to have compiled a series of notes on all the parishes of his diocese in an elegant volume. Transfixed by a hook or tied in the corner with a string will be original presentations to livings, often yielding useful information; and this reminds

us that the Bishop's certificates of institutions to benefices returned yearly into the Exchequer are sometimes of great value where records are defective and would be of still greater value if the registrars had been more conscientious in their answers to the writs, and the Exchequer officials less careless in their preservation of the returns. Here, too, in the office or muniment-room, should be, though, again, in only too many cases they have been allowed to perish, the Bishop's transcripts of parish registers. But there is yet another kind of record to which attention should be directed—viz., the books in which persons about to be ordained, or admitted to a benefice, or licensed to a curacy, or to practise medicine, or to teach, will have made with their own hands subscription either to the Thirty-nine Articles, or to the Three Articles, or to both. These Subscription Books are of great interest not only as autographs, but also for incidental information; they should be found in every diocesan registry, but their value has been little recognized, and many have been allowed to perish.

A proper treatment, even in summary form, of monastic and capitular records would require more space than has already been occupied. Much information in regard to monastic history is, of course, to be found in episcopal registers, and a careful student who could give the time necessary to systematic investigation of such registers with that end in view could, it is quite certain, add materially to our knowledge. In the way of

independent records it is unfortunately true that even in the case of great foundations not associated with cathedrals, and *a fortiori* in the case of smaller ones, all that can now be recovered may be the Charter Book. Lists of these have been drawn up from time to time, and some have been printed, but it is probable that there are still many more to be identified in libraries, or even possibly in private possession.

Of equal importance where they can be recovered—and they are less likely to have been preserved—are monastic records like the Beverley Act Book printed by the Surtees Society, or the Register of Worcester Priory printed by the Camden Society. There may be seen forms of proxy, public and private letters, acts relating to the Society and details as to the fabric, rights of patronage, pensions, tenures, compositions, etc., sometimes injunctions which for one reason or another have never found a place in the episcopal register, or sometimes, as, for example, in the records of Merton Priory, repudiation of any right of episcopal interference, of which repudiation the notary will make a public instrument at the request of the venerable man the Prior. Obedientiary Rolls such as those of St. Augustine's, Westminster, Barnwell and Winchester, or works like Mr. G. J. Turner's edition of the Black Book of St. Augustine's,<sup>1</sup> with its details of property, make

<sup>1</sup> 'Records of Social and Economic History,' *The Black Book of St. Augustine's*, ed. G. J. Turner and H. E. Salter (Milford, 1915).

us sigh for the student or the group of students in a *seminar* who will compile a new hand-list of all known sources for English monastic history; while Dr. Pearce's book on the Monks of Westminster<sup>1</sup> has shewn what a wealth of information as to the internal concerns of a monastic house can be gathered from a *vindemiatio prima* of the truly amazing collection arranged and catalogued by Dr. Scott. And Mr. Johnson's notes on the Treasury of Receipt in his little book on the Public Record Office<sup>2</sup>—a most valuable compendium of information—will suggest other fields. It is not that these documents are not known: we need a body of students to deal with them scientifically, to shew us the whole before we decide to continue for ever nibbling at the parts, and a benevolent and instructed Maecenas to furnish means for publication.

The records of the capitular body of a cathedral, whether of the old or the new foundation, will each have something to contribute to the story of the administration of the diocese and of many of its parishes, besides much that is of interest in relation to their own concerns. The edition of Lincoln Cathedral Statutes by Henry Bradshaw and Mr. Christopher Wordsworth, the latter's book upon Salisbury, and his edition of the *Laudum* of Bishop Alnwick of Lincoln, may serve to indicate for any student profitable lines of investigation *in pari materia*, if he is fortunate enough to secure

<sup>1</sup> Cambridge University Press, 1916.

<sup>2</sup> 'Helps for Students of History,' No. 4 (S.P.C.K., 1918).

reasonable access to the Chapter muniments. In the case of the *Sede Vacante* Registers at Canterbury the value and interest is so great and some of the documents contained in them are so important that no step ought to be left unturned to secure the publication at least of an abstract and greatly increased facilities for study.

Archidiaconal records and the activities of Rural Deans may be dealt with more conveniently under the heading 'Ecclesiastical Records: Judicial,' and the subject of Parish Registers demands separate treatment. We may be allowed to conclude this part of our survey with an irrelevance to revive the drooping spirits of the student. Let him be sure that if he does not find what he is seeking he will find something else that will interest him, even if it be only that in looking for presentations to livings among the Privy Signet Bills of Charles I. in the Record Office he may happen, side by side with them, upon a warrant to 'Richard Delamain our mathematician for measuring and describing our tower of London, for a magnetic instrument in silver for our dear consort the Queen, some new mathematical instruments for our deare son the Prince, and being at Edinburgh some instruments for our observation of the latitude there.' And some allowance may be made for the present attempt of a different kind to take our bearings.

# ECCLESIASTICAL RECORDS

## II

### JUDICIAL AND LEGAL

A SKETCH—for the space at our disposal forbids anything more—has been given of the main classes of ecclesiastical records from a general and administrative point of view. We turn now to the judicial and legal side. The layman who essays to discuss the mysteries of the law, hedged round with sanctions terrific to the uninitiated and demanding the courage of a Dante, must needs walk warily, for the path is full of pitfalls. Even an Archbishop has been known to ask questions that suggest a confusion between the civil and the canon Law, though probably few would nowadays be greatly troubled if in the proceedings of a Royal Commission one had betrayed himself the successor of Augustine, if Bede may be trusted, rather than of Becket or Peckham or Sudbury or Chichele or Stafford or Warham, who were all trained canonists.

It may make for clearness in regard to what follows if it be stated at the outset that what is proposed to be attempted is not the history of the development of ecclesiastical courts, but an indication of the kind of records that may be looked for

in connexion with them, and of where those records may be found. Thus, we are not concerned to consider wherein lies the difference, if any, between a Convocation and a Provinciale Coneilium,<sup>1</sup> or whether Convocation possesses judicial functions by virtue of original jurisdiction or of the Archbishop's position as metropolitan, or whether the Archbishop's own jurisdiction in regard to a particular case or class of cases is derived from metropolitical or legatine authority. That Convocation did, and perhaps does, possess judicial functions is as clear from the records of Lollard trials in the Fourteenth and Fifteenth centuries entered in the archiepiscopal registers as from the case of Whiston in the Eighteenth contained in the records of Convocation. In an independent form those records prior to 1640 seem to have perished, though it is not so certain that this is the case as it is in regard to the ancient records of the Church of Scotland, which, having been required for the purposes of a lawsuit, were lost in 1834 through the fire which destroyed the House of Lords. Such of the records of Canterbury Convocation as remained at the beginning of the Eighteenth century were removed, according to a statement of Archbishop Tenison, from 'the dust and cobwebs' of a room at Doctor's Commons to the Registry at Lambeth House, and, as continued down to 1850, now find a home in the Muniment Room of the Library.

<sup>1</sup> See 'Convocation of Canterbury: its Early History,' by J. Armitage Robinson (*Church Quarterly Review*, Oct. 1915, pp. 81-137).

They are open to the inspection of members of Convocation, but not of other persons, except by special leave, which is, however, extremely unlikely to be refused to any properly accredited student. In passing it may be added, in view of the heresy trials already referred to, first, that so far as can be judged jurisdiction in such cases never belonged to any court lower than a Consistory Court, and the sole expression of regret that is to be found in Commonwealth records as to the abolition of the Court of Arches and other ecclesiastical courts is that by an oversight there had disappeared with them the most convenient method of dealing with a heretic whom it was desired to execute for his Socinian opinions.<sup>1</sup> However, it was discovered that the resources of civilization were not exhausted. Secondly, the knowledge which we derive as to ecclesiastical proceedings from Henry IV.'s writ for burning William Sawtre in 1401, which is entered on the Close Rolls, suggests another possible source of information for the student, as also do the writs of prohibition to the ecclesiastical judge issuing out of Chancery or the King's Bench both in relation to the cases contemplated by the writ 'Circumspeete agatis' of Edward I. in 1285, and in others, since there are not many conceivable cases in which a prohibition could not issue, whether or not a *consultatio* followed.

We must pass over archiepiscopal constitutions

<sup>1</sup> British Museum Add. MSS. 15669, f. 174.

promulgated in the Provincial Council and the canons passed in Convocation such as may be found printed in Spelman's or in Wilkins' *Concilia*, in Johnson's *English Canons*, in Haddan and Stubbs' *Councils and Ecclesiastical Documents*, with the bare remark that they are ecclesiastical records of the highest importance, and that two of the greatest desiderata for English Church History at the present day are a new amended Wilkins and the completion of the work of Haddan and Stubbs, which would involve re-editing Wilkins on rather different lines. To accomplish either task successfully in the light of modern knowledge demands a body of students working in a *seminar*, or at any rate working in co-operation and helping each other by mutual criticism. It is clear that such a body must be at least large enough to ensure continuity, since the work would take some years, but it is eminently work for advanced students, and such as a body of professors and lecturers might endeavour to afford the time to organize or undertake.

Before proceeding to deal with the records of the ecclesiastical courts proper, whether normal or abnormal, it will be convenient to refer to a class of records of which little is known and which stand by themselves—viz., those of the Faculty Office. In every Bishop's register of pre-Reformation days you will find examples of faculties and licences of various kinds, some of which are still decreed by Bishops' Chancellors, though we no longer think it necessary, for example, to license

schoolmasters. These licences were as much in the ordinary course as the indulgences which a mediaeval Bishop was authorized to attach to the performance of duties of special piety in prayers or alms, pilgrimages, the repair of a highway or a bridge, or even to attending and listening attentively to the sermons of a particular preacher. But by the terms of the Act 25 Hen. VIII., c. 21, commonly known as the 'Peter's Pence' Act, the Archbishop of Canterbury and, except in specified circumstances, he only, is empowered to grant 'all maner suche Licences, Dispensacions, compositions, faculties, grauntes, rescriptes, delegacies, instrumentes, and all other wrytynges, for causes not being contrary or repugnant to the holy scriptures and laws of God as . . . hath byn used and accustomed to be had and obteyned . . . at the See of Rome,' and all other such licences 'as shalbe convenient and necessarye to be hadd,' with the same proviso. These extensive powers are exercised by an official, appointed by patent, the Master of the Faculties, and though the form of some of his Acts is now camouflaged by the interpolation of a reference to the practice of the pure Reformed Churches, the rest of the verbiage is reminiscent of the pre-Reformation forms issued under the Archbishop's legatine authority.

To the public the Master of the Faculties is generally known, if at all, as the authority responsible for a peculiarly expensive, if sometimes convenient, method of getting married

which is called ‘by special licence.’ But that is to take a very inadequate view of his powers, which extend to a great many other things, including appointment of notaries, dispensations for holding benefices in plurality, and degrees, licences to defer orders or dispensations for taking them at irregular times, or for a minor to hold a benefice though not in orders; or for the non-residence of an incumbent holding cure of souls; letters dimissory; licences to eat flesh in Lent which we shall find continuing to be granted down to the Seventeenth century; dispensations for ordination despite illegitimacy, still granted; licences to preach, to teach, to practise medicine and surgery, limited by the Charter of the College of Physicians and now abolished by the provisions of the General Medical Act; or licences to practise as a midwife, which in the Middle Ages were certainly granted by any Bishop. Some of these things will be found entered in the Provincial Act Books or Registers; some which require for their validity confirmation under the Great Seal may also be found in the Chancery records; all should be in the books of the Faculty Office. In mentioning these it is proper to say that the historical student of the future will find himself under a heavy debt of gratitude to the present Master, and, further, that it is highly probable that somewhere or other in private possession there still exists unidentified the Faculty Book of Henry Paman, who followed Sancroft into

retirement. Its contents can be reconstructed, but that is not the same as recovering the original. Faculty Office general marriage lieenees still extend over both Provinces. The 'allegations' for the licences were published, imperfectly, by Colonel Chester, and also an Index to those issued by the Vicar-General—a dual jurisdiction which the Faculty Office endeavoured to get rid of in the reign of Elizabeth on the ground that the Archbishop could not as Archbishop of Canterbury grant licences in such cases as fell within the Act of Henry VIII., though the Faculty Office could do so. Parker routed them, but the subject was again the cause of an acrimonious controversy as to fees in the Eighteenth century. In any case, however, the expense of the licensees is due, not to the Church, but to the State, which claims far the larger share of the fees.

The power of conferring degrees seems to have had a special fascination for newly made Archbishops. A list of those conferred was printed by Dr. Stubbs in the *Gentleman's Magazine* in 1864. The number has varied greatly in different periods, but from 1660 to 1747 Potter was the only Archbishop who did not confer one or more during the first week of his primacy, and the Dean and Chapter of Canterbury seem even to have pleased themselves by exercising the power during a vacancy.

In theory the Master of the Faculties acts only on the *fiat* of the Archbishop or of the Dean and Chapter *sede vacante*, but in practice this seems

sometimes in minor matters to be assumed. He issues documents under his seal, which has still at the present day the distinction of being impressed upon a wafer, not on paper. In some respects—*e.g.*, the making of a Notary Public, which formerly by Papal delegation might be within the powers of a diocesan Bishop, for William of Wykeham exercised the right—the Master's jurisdiction is as wide as the Empire. He could and would make or refuse to make a Notary for Wellington in the Dominion of New Zealand as readily as for Wellington in the County of Somerset. The office is important, for a Notary is equivalent to two witnesses, though two witnesses do not make one Notary, and for the validity of some acts and credit of some deeds the attestation of a Notary is indispensable. We even find Archbishop Wake personally attesting a record because his secretary has not yet been so created. The mediaeval Notary usually styles himself such by ‘apostolic’ or, as he sometimes adds, ‘and imperial’ authority,<sup>1</sup> and the office seems to have been known on the Continent earlier than in England; at any rate, the twenty-eighth legatine constitution of Cardinal Otto in 1237 states that ‘the use of notaries is not found in the realm of England.’

To this fact is attributed, rightly or wrongly, the importance of Rural Deans as officials possessing a seal with which acts or deeds—*e.g.*, procurations—might be attested. In the Thirteenth

<sup>1</sup> ‘Regia sublimi auctoritate,’ under Edward VI.

century we find them as collectors of ecclesiastical taxes and valuers of benefices, and probates still remain from the beginning of the Fifteenth century which bear their seals. In the 'courts' over which they presided mortuaries and heriots were in some instances recoverable.<sup>1</sup> Of the reputation which they succeeded in achieving it would be impossible, perhaps, to find terser expression than in Archbishop Peckham's twelfth constitution of 1283, with its reference to their 'luciferiana versutia'; but any records of their activities are valuable and should be carefully noted.

As we are dealing, not with the history of courts, but with records, it will be convenient to deal next with a subject-matter which lies upon the border-land of the civil and ecclesiastical jurisdictions. When Bacon says that 'testamentary causes have been allowed and permitted to the courts ecclesiastical by a favour and connivance of the temporal jurisdiction in a kind of piety and religion which was thought incident to the performance of dead men's wills,' even if we think, with respect, that he is writing neither as an historian nor as a lawyer, we must remember that neither the one nor the other has ever formulated a completely satisfactory theory of the matter, and that certainly none was ever consistently and universally exemplified in practice.<sup>2</sup> Advanced students will not need to be

<sup>1</sup> See *Horae Ruridecanales*, by W. Dansey, 2nd edit. (Rivington, 1844), vol. ii., pp. 48–49, 74.

<sup>2</sup> The student will find matter of interest in this connexion in Gibson's *Codex and Eccl. Courts Commn. Report* (1883).

reminded that we are not concerned with wills in the large sense of modern days, for broadly speaking no freehold could be devised by will before 1645, though this general statement needs qualification owing to special customs, and it may be noted that even now English law does not recognize absolute ownership of land.<sup>1</sup> But in the case of personal property it may be said, speaking generally, that from the Thirteenth century to the passing of the Court of Probate Act of 1857 the probate of wills and the grant of administration of the goods of intestates and the trial of causes relating to them belonged to courts ecclesiastical.

Let us consider what that means. In the Report of the Ecclesiastical Courts Commission of 1832 these courts are distinguished and enumerated as they existed at that time. Apart from the Provincial courts, 4 in number, and the Diocesan—*i.e.*, Consistory and Commissary—Courts, which number 46, and the 35 Archidiaconal Courts, there were no fewer than 231 Peculiar jurisdictions and 49 Manorial Courts, making 365 in all. With one exception—the Arches Court of Canterbury—every single one of these might, and at one time or another probably did, grant probates and letters of administration in non-contentious cases. Of every single one some records might, but in some cases certainly do not, and in many more probably do not, remain. The Peculiar jurisdictions are ‘Royal, Archiepiscopal, Episcopal, Decanal,

<sup>1</sup> See J. Williams, *Law of Real Property*, 21st edit. (1910), p. 6.

Subdecanal, Prebendal, Reectorial, and Vicarial,' some of them extending over only a single parish. The Manorial Courts have nothing necessarily ecclesiastical about them, and except, perhaps, in such a case as that of the Duke of Portland's exempt jurisdiction for the probate of wills in two parishes of Nottinghamshire, it might well be as difficult to suggest where their records will be found as to be certain what other cases besides testamentary might at some time have come within the purview of a particular court of a Peculiar. Three observations may, however, be ventured. Never be satisfied that a record known once to have existed does not exist somewhere now, unless, as in the case of early Chapter Acts of Canterbury, you have the statement of a credible witness that he has seen and handled the burnt remains.<sup>1</sup> Secondly and thirdly, if you want to find anything that is missing, whether it be Churchwardens' accounts, parish registers, records of proceedings, inventories, or even portions of episcopal or archiepiscopal registers, do not despair till you have satisfied yourself—it will be no easy task—that the documents are not (*a*) among the records of a court of superior jurisdiction, or (*b*) among the papers of the descendants of a former judge of an inferior court or, more probably still, of his registrar.

In regard to these last two points something more may be added. First, that in the case of

<sup>1</sup> 'Muniments of Dean and Chapter of Canterbury,' by R. L. Poole (*Hist. MSS. Comm.* Various Collections, p. 211).

a Peculiar the appeal, if any, will normally be to the Consistory Court or to the Court of Arches, and the records of which you are in search may be exhibits or processes transmitted. Secondly, the Probate Act of 1857 entailed the transfer of a great mass of material other than testamentary, because the testamentary documents had not been kept separate in the records of the original custodians. Thirdly, the later transfer of jurisdiction in 1875 to the High Court of Justice, Probate and Divorce Division, placed these documents in custody not merely unfavourable, but inimical in almost every conceivable way to the interests of historical students, and under conditions which even the courtesy of officials can do little to mitigate. Fourthly, the search for the name of the judge or the registrar at a given time will not, in the case of the more important Peeuliars, be so difficult as might be expected, partly because their offices were often held by patent which can be found in Registers or Act Books, partly because, while there might be 365 judges, or even, including surrogates, double or treble that number, there were fortunately never anything like 365 registrars. If you will look in the Act Books at the patents of the Deans of the Archbishop of Canterbury's Peeuliars outside London, you will find probably invariably a stipulation that such and such a person shall be appointed Registrar or Scribe of his Acts, and that person will as often as not be the chief or other official of the Principal Registry. This fact is

sometimes made the occasion for severe strictures upon pluralism, but its purpose was the laudable one of securing that the person executing a responsible office should be one qualified to do so. There were cases, as in the Prerogative Court of Canterbury, where the registrars appointed by patent for life sometimes performed no other duty save the pleasant one of receiving £8,400 10s. 9d. between them in fees in a single year, or as in the court of the Bishop's Chancellor at Oxford, where the registrars in 1830 were the children of a former registrar and their trustees. Then the duties were performed by deputy. The deputy must be a person of at least such moderate qualification as is implied by being a Notary, and was often of higher legal attainments. But we shall do well to bear in mind the possible consequences of this in particular cases. The records of a Peculiar or of an Archdeacon's Court may be in the custody and in the registry or the private office of a person who is also registrar of another court—*e.g.*, of the Consistory; the deputy registrar at Oxford was also in 1830 chapter clerk at Christ Church, secretary of the Bishop, and one of the solicitors of the city. At Bangor at the same date neither the Judge of the Consistory Court nor his surrogate had received any training in law, civil or ecclesiastical; the registrar was a lunatic under the care of a committee appointed by the Lord Chancellor; and the deputy-registrar was a local solicitor. It may be suggested with confidence that while the possibility of records

having gone astray is—shall we say?—at any rate not to be excluded, the chances of many having been preserved which are deemed to have perished are more favourable than might have been supposed.

In the case of the Prerogative Courts of Canterbury and York, which had superior jurisdiction in testamentary matters as being provincial courts, the number of wills proved was very large. The original wills remaining in the Canterbury Court down to 1660 are enumerated in the Report of the Ecclesiastical Courts Commission of 1832. The earliest dates from 1484, but there are, we are told, ‘many chasms.’ The fact that the right of probate or grant of administration was claimed by the Prerogative Courts in case of all persons having *bona notabilia*, interpreted as being of the value of £5 and upwards, in more than one diocese, and that the practice of some courts—*e.g.*, the Chancery Court of York—required a Prerogative probate, led, on the one hand, to a good deal of friction with other courts having the right of probate, so that you may sometimes find double probates of the same will; and, on the other hand, to the advice given by family lawyers in all cases which might become disputable that it was really cheaper to begin at the top, instead of running the risk of double expense, especially as a Prerogative probate only cost a shilling or two more. Grants of probate or letters of administration in the Arches Court were comparatively uncommon, being only granted as the result of a suit, though it had original jurisdiction in suits for legacies after probate had

been granted in the Prerogative Court. We may take leave of this part of our subject by recommending the student not to omit to consult the appendices to the Report of the Committee on Local Records published as a Blue-book in 1902.

We can now pass on to consider the kind of records that may be expected in other ecclesiastical courts, only concerning ourselves with procedure so far as it affected, or was affected by, subject-matter. At the outset, since we may assume acquaintance on the part of the student with Lyndwood's *Provinciale* (Oxford, 1678) and Gibson's *Codex*, attention may be called to four other books from which he may learn much—viz., Oughton's *Ordo Judiciorum*, which gives the forms; Hale's *Precedents in Causes of Office against Churchwardens and others* (1841), and his *Precedents and Proceedings in Criminal Causes, 1475-1640*; and Raine's *Depositions and other Ecclesiastical Proceedings from the Courts of Durham, 1311—Elizabeth* (Surtees Society, vol. xxi.), all of which give illustrations from actual proceedings. Many of the minor courts, as has been mentioned, dealt only with non-contentious business, and in many cases also only with probates and administrations, though of others—e.g., of the Court of the Deanery of Thetford—it is said that 'they possessed peculiar powers and advantages—as that of having all ecclesiastical causes determined at home,'<sup>1</sup> and the jurisdiction of the Archbishop of Canterbury's Peculiars is represented as quasi-archidiaconal.

<sup>1</sup> Dansey, *op. cit.* ii., p. 53, note,

It may be doubted if any Archdeacon ever enters on office without being reminded within a week by some kindly friend of John of Salisbury's famous *dubitandum*, 'An possit salvari archidiaconus?' But let us look at the records of an Archdeacon's Court as illustrated by Archdeacon Hale or by the records of the Archdeaconry of Suffolk now in the Bodleian Library—one could wish that there were more of them either there or in the British Museum or at Lambeth—or the Archdeaconry Records of Leicester, a list of which is appended to the Report of a Committee of Convocation on the Collection and Custody of Local Ecclesiastical Records (1906, No. 403, S.P.C.K.). Besides records relating to inductions to benefices, such as form the basis of the notes just published by the Archdeacon of Winchester, or sequestrations, admissions of Churchwardens, schoolmasters, parish clerks and midwives, subscription books, records of the state of the clergy or of their churches, such as may be found among the *Chartae Miscellaneae* at Lambeth, acts of consecration, faculties, terriers, transcripts of parish registers, and a large number of miscellaneous documents, including probably registers of recusants or of conventicles, we shall find marriage allegation books, the *comporta et detecta* in visitations, and the presentments of churchwardens—the last two often of interest, and especially the former—court books relating to criminal or to non-criminal business, citations, caveats, depositions and libels (usually interesting), assignation books throwing light on the business, Acts of Court, lists of excommunications, cases of

penances, etc., amounting in all to a very considerable bulk.

Leaving out of account those which relate specifically to the functions of an Archdeacon, but remembering that in some cases the official of the Archdeacon and the Bishop's official enjoyed concurrent jurisdiction, we shall expect to find much the same kind of documents in the registry of a Consistory Court or the Court of a Bishop's Commissary, with the addition of appeals from lower courts. In most cases we may expect to find gaps, but it will encourage us to remember that a Fourteenth-century court book of the Commissary Court of Canterbury and a Seventeenth-century one of the Deanery of Boeking have both been discovered in the last six or seven years. In the superior courts of appeal—e.g., the Arches Court, *alma curia Cantuariensis* as it was styled, whether in the language of politeness or affection it is not necessary for us to determine, and the Chancery Court of York—the records remaining will only include extra-judicial documents if introduced as exhibits; but in regard to judicial records of the Court of Arches at any rate it seems probable that the ordinary statement that it was never a court of first instance except in legacy suits or for cases transmitted by letters of request requires modification, and the conjecture might even be hazarded that the combination in one person of the offices of Official Principal and Dean of the Archbishop's thirteen parishes in the city of London, when it had once been made, led to some confusion on this point.

Some inference may have been drawn from what has already been said as to the many points in which the ecclesiastical courts touched the life of the people, lay as well as clerical, and as to the interest which consequently attaches to their records. But our treatment may be enlarged a little with advantage. In his masterly historical appendix to the Report of the Ecclesiastical Courts Commission of 1883, Dr. Stubbs has stated that ‘ecclesiastical jurisdiction in its widest sense covers all the ground of ecclesiastical relations, persons, properties, rights and remedies; churches, their patronage, furniture, ritual and revenues; clergymen in all their relations, faith and practice, dress and behaviour in church and out; the morality of the laity, their religious behaviour, their marriages, legitimacy, wills and administrations of intestates; the maintenance of the doctrines of the faith by clergy and laity alike and the examination into all contracts in which faith was pledged or alleged to be pledged, the keeping of oaths, promises and fiduciary undertakings.’

In any mediaeval episcopal register you will probably find a citation by an ecclesiastical judge which states that according to common report A. B., whether clerk or layman, is vehemently suspected of being guilty of such and such practices. The judge is here said to be acting *ex officio mero*; and as his apparitor before, during, and after the time of Chaucer was commonly supposed to be responsible for having brought the ‘publica fama’ to the ear of the judge, and was often accused of being a blackmailer as well, the unpopularity of

that official is easily understood, and unlawful expressions of the popular feeling led to some amusing suits. In some criminal cases the judge will act at the instigation of some party, and his office is then said to be 'promoted' by that party. In both classes of cases the person accused found himself compelled by a procedure astonishing to anyone accustomed to the practice of secular courts to make oath—this was the *ex officio* oath—as to whether he was or was not guilty, and you will probably see strong reason for supposing that he often committed perjury in consequence. If he denied the charge the judge ordered him to produce a certain number, usually from two to six, credible persons having knowledge of the facts as his compurgators, to swear to their belief in his innocence, and if they did so to the satisfaction of the judge, which was by no means always the case, the accused was declared to be restored to good fame. In such a case the sentence or act of court would usually disclose the nature of the original charge, whereas in some cases in the Sentence books of the Arches Court it is sometimes practically impossible to determine from the sentence alone what the suit has been about. But the procedure here referred to is mentioned because it illustrates what happened when a person was claimed by the Bishop from the jurisdiction of the secular courts as being a clerk, and attention should be called to the records of such cases. For example, in 1568 we have an order for the production in the Church of Newington by the keeper of the prison of the

Sheriff of Surrey, called the White Lyon in Southwark, of six convict clerks who there purged themselves of the offences charged (which ranged from burglary to murder) and were restored to good fame. As a person reading the documents may perhaps form a certain independent conclusion as to their innocence or guilt, it may be worth while to add that these six *clericu convicti* were not persons in holy orders, but two yeomen, two labourers, a husbandman and a carpenter.<sup>1</sup> A note may be added as to the churchwarden's presentments and the *comperta et detecta* in visitations, both of which, as has been said, yield valuable material for local history. These sometimes led to suits *ex officio*, or to civil suits, but it must not be assumed that they always did so. In moral cases, in cases of brawling in church, or non-payment of church cess, or non-rendering of proper accounts on the part of past churchwardens, or not repairing the chaneel, or not fencing the churchyard properly, so that pigs rooted up the graves, or felling timber in the churchyard, suits would probably follow. In others they perhaps would not—*c.g.*, in Parker's Visitation, 1573, 'we present that our chaneel is in decay for lack of reparacons in default of my Lord's grace' [the Archbishop]; but perhaps the repairs were executed in consequence.<sup>2</sup>

The *ex officio* cases are cases of discipline *pro correctione morum et pro salute animae*. But there

<sup>1</sup> Archbishop Parker's Register I., ff. 275–276<sup>b</sup> (Canterbury and York Society), pp. 511–519.

<sup>2</sup> Printed in *Archacologia Cantiana*, vol. xix.

are others in which process is at the instance of parties—hence called ‘instance’ cases—which are non-criminal in character, such, for example, as relate to churchwardens and their election or accounts, or church rates, or tithes or pews, or wrongful dismissal of a sexton, or marriage cases, or defamation.

It would be tempting to enlarge upon the character of the cases, especially those which bear upon marriage law, which are of great importance. Some of the other cases have a quaint interest, perhaps, to us now. Thus, in the Essex Archdeaconry Court we find a man, who has been presented in 1636 for smiling in church, dismissed with a caution.<sup>1</sup> In London a man is sued (1482) for hiring foreigners at his craft, contrary to his oath on admission to the freedom of London and on admission to his art. Another man (1482) admits having been with someone in his house in Totell Street, Westminster, and after certain prayers said having looked into a stone of berell. He saw therein a man in a certain dress carrying off a easket stolen from his mother’s house with pearls, stones, etc. In 1528 a woman admits gathering herbs and using them with prayers for making potions for the sick, and says that she learnt it in Wales from one called Mother Emet. In 1578 the Rector of Pitsey is charged that ‘he is suspected to be a userer’; he confesses that ‘he lent owte a litle money and had iis. of the pound, after the rate of tenne in the hundred; but he did

<sup>1</sup> See W. H. Hale, *Prec. and Proc.*, pp. 258, 9, 10, 107, 166.

not urge the same, but onely the parties did of their owne good will give him after the same rate.' Ordered on the following Sunday at divine service to read out Ps. xv, and confess his fault and pay 5s. to the collectors [for the poor]. In regard to cases of defamation, which are very numerous, we shall notice that, while in secular courts 'in criminal proceedings, until the year 1843, the fact that the words were true was regarded as wholly irrelevant. No evidence of the kind was admissible; the attempt to give such evidence was regarded as an aggravation of the original offence,'<sup>1</sup> in the ecclesiastical courts justification was constantly pleaded, and apparently regarded, when established, as a good defence. Most of the ecclesiastical cases, it must be admitted, partook of the nature of rather coarse abuse. But one wishes one knew the result of Lawrence Dawgleis' suit against John Wright *in causa diffamacionis* in 1569, for that he said 'that he was a skott'; though we are not surprised to find that it comes from the Durham Court.

Mention has been made of books of excommunications, and notices of this censure, of course, occur frequently also in registers. A person who persistently failed to appear before the court or to perform a penance enjoined was liable to excommunication. Of the penances themselves some very interesting records and certificates will be found. In the case of persons excommunicated remaining recalcitrant after forty days the Archbishop was wont, as very frequent entries both pre-

<sup>1</sup> *Encyc. Laws of Eng.*, 2nd edit., iv. 474, art. 'Defamation.'

and post-Reformation shew, to apply, either on his own motion or being moved thereto, *e.g.*, by the official of an Archdeacon who had pronounced the sentencee, for a ‘Signifieavit’ by which the secular court authorized the Sheriff to imprison the delinquent. In pre-Reformation times we find elaborate directions for denunciation of the excommunication with bell, book, and candle, and every circumstance of impressiveness. In regard to its consequenes we may be reminded of the sentencee of the Bishop of Vasona, ‘Separo te ab ecclesia militante et triumphante,’ and of Savonarola’s immortal reply, ‘Militante, non triumphante: hoc enim non tuum est’; but unfortunately no distinction was made between the gravest crimes and such offenses as stealing a Bishop’s covies or deer, and the praetice of excommunication for non-payment of fees brought the courts into disrepute and a terrific sentencee into contempt.

The volume of business in Consistory and Commissary Courts was sometimes very great, and it is impossible to give more than a very slight indication of its character. Archdeacon Hale states that ‘an accurate enumeration of the causes which were before the Court of the Commissary (whose jurisdiction was limited to the city of London and some small part of Essex and Hertfordshire) from Christmas, 1496, to Christmas, 1500, shows that no less than 1,854 persons were cited before the Court in the period of four years; one half of whom were charged with the crimes of adultery’ and the like.<sup>1</sup>

<sup>1</sup> Hale, *op. cit.*, p. liii.

A summary of the cases tried in the Arches, for which there is now abundant material properly arranged, thanks to the present judge of that court, would make an exceedingly interesting study. It would include most of the subjects already mentioned, and also some not unimportant ones relating to conflict of jurisdictions, such as the suit of the Chancellor of Hereford against the Archdeacon's official for contumacy in 1664, or the quarrel between the official of the Archdeacon of Sudbury and the Vicar-General of the Bishop of Norwich in 1703. Most of the Arches records date from the Restoration, but there is at least one Process Book of the reign of Elizabeth and a Sentence Book of the reign of Charles I., and the earliest extant original sentence actually issued, dating from the Thirteenth century, has been found during the last few years in a box of deeds in private possession. It is in a wonderful state of preservation.

There still remain three jurisdictions to which some reference must be made. The Archbishop of Canterbury's Court of Audience has long been a problem to lawyers, and little is known of its history. It is most probable that it was a superior court in which the Archbishop could, and did, sit in person—as he could not do in the Arches Court so far as evidence seems to go—to try cases of any kind. The records of the court must be sought, if they are to be found at all, in the Archbishop's Registers,<sup>1</sup> unless any should be discovered at St.

<sup>1</sup> A few are included in the Petyt MS. (511) in the Inner Temple.

Paul's. What would appear to be one such case in the Registers is an interesting and curious marriage suit in which Archbishop Parker, proceeding *ex officio mero* on the basis of public report, tried the validity of an alleged marriage in which one party was one of the Queen's 'maydens of honor,' and which had the unusual feature of being denied by both parties concerned, and this although the wedding-dress was said to have been ordered with the Queen's knowledge, will, and consent.<sup>1</sup>

The proceedings of the Court of High Commission have been summarized by Dr. Roland G. Usher in a work to which all students will refer.<sup>2</sup> It was created by Queen Elizabeth in the first year of her reign, and had an unpopular life of eighty years. Records of it are to be found in the Public Record Office at Durham, Gloucester, and in some public libraries. There are some interesting documents relating, *inter alia*, to the proposed application of its fines to the restoration of St. Paul's in 1637 among the Wentworth Papers.<sup>3</sup> It exercised a concurrent jurisdiction with other courts, and was not a court of appeal from them nor subject to appeal. Nothing practically that could be tried in an ecclesiastical court was incapable of being tried in it, and the result of its working has been not unjustly described by Dr. Stubbs as 'morally bad and politically destructive.'

<sup>1</sup> Parker, *Register I.*, ff. 242-244 (Canterbury and York Society), pp. 406-415.

<sup>2</sup> Oxford University Press (1913).

<sup>3</sup> *Works of Laud* (Oxford: Parker, 1860), vii. 400.

For the Court of Delegates, the supreme court in ecclesiastical causes from 1559 to 1832, the student will naturally refer to the often-quoted Report of the Ecclesiastical Courts Commission of that year. It was unlike all other ecclesiastical courts in being constituted afresh for each case, and in the payment of the judges by the successful party at the close, at the rate of one guinea a day for each judge. It was really a branch of the Chancery jurisdiction, gave no public reasons for its decisions, and was subject only to a Commission of Review. Some of its records, unfortunately incomplete, are to be found in the Public Record Office, and reference should be made to Rothery's *Return* (H. C. 1868, No. 199).

We have concluded our survey so far as space permits. It is necessarily incomplete and inadequate, and omits very much that is interesting by way of illustration. Yet it may have been worth attempting if it stimulates students to further inquiry and suggests directions in which such inquiry may be pursued. As to its statements in relation to so vast a field, a lecturer can perhaps hope at most that he may fall under the less unfavourable of the two judgments that he once heard pronounced *obiter* upon two of the Judges of the High Court by one of the most learned of living lawyers: 'In the case of X,' he said, 'one may safely assume that he is wrong; in the case of Y one only has no assurance that he is right.'

PRINTED IN GREAT BRITAIN BY

BILLING AND SONS, LTD., GUILDFORD AND FELIXSTOWE

08521  
5-06



DATE DUE

**GAYLORD**

PRINTED IN U.S.A.

UC SOUTHERN REGIONAL LIBRARY FACILITY



**AA** 000 634 925 2



